



Dan Skopce
Acting Agency Secretary

California Regional Water Quality Control Board

San Francisco Bay Region

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Arnold Schwarzenegger
Governor

Date: **MAY 15 2006**
File No. 43S1069 (MS)

TWC Storage, LLC
Attn: Jack May (jack.may@msn.com)
420 Maple Street
Redwood City, CA 94063

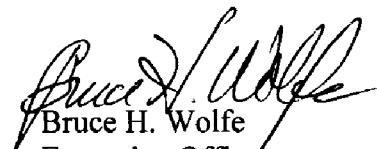
SUBJECT: Order No. R2-2006-0030 setting Administrative Civil Liability for property located at 1165 East Arques Avenue, Sunnyvale, Santa Clara County

Dear Mr. May:

Attached please find Water Board Order No. R2-2006-0030, setting Administrative Civil Liability in the amount of \$25,000 for the discharge of perchloroethylene, a hazardous waste, into waters of the State at the subject property. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account at the above address within 30 days of the date of this Order.

If you have any questions regarding this letter, please contact Max Shahbazian of my staff at (510) 622-4824 or by email at MS Shahbazian@waterboards.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

Attachment: Water Board Order No. R2-2006-0030
cc with attachment: Mailing List

MAILING LIST
1165 East Arques Avenue
Sunnyvale, California

Silicon Valley Law Group
Attn: Jeffrey S. Lawson (jsl@svlg.com)

Clayton Group Services
Attn: John Werfal
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Advanced Micro Devices, Inc.
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Treadwell & Rollo, Inc.
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Knowledge Learning Corporation
Attn: Steven Claussen
(SClaussen@KLcorp.com)
Attn: Kelley Egge [Kegre@Klcorp.com]
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E3RA Consulting
Attn: Doug Henry (dhenry@e3ra.com)

Santa Clara Valley Water District
Attn: George Cook
(GCook@valleywater.org)
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San Jose, CA 95118-3614

Santa Clara County Dept of Environmental
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Attn: Nicole Pullman
(Nicole.Pullman@deh.co.santa-clara.ca.us)
1555 Berger Drive, Suite 300
San Jose, CA 95112-2716

City of Sunnyvale Department of Public
Safety
Attn: Ron Staricha
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P.O.Box 3707
Sunnyvale, CA 94088-3707

U.S. EPA Region 9
Attn: Penny McDaniel
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Prodigy childcare center parents:
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Jerry and Tina Martinson
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Kecia Barnes (kbar96@yahoo.com)
Lynda Flores (Flores_Lynda@yahoo.com)
Sharon Adam (Sharon_Adam@yahoo.com)
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STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2006-0030

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

TWC Storage, LLC
1165 East Arques Avenue
Sunnyvale, Santa Clara County

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) finds, with respect to TWC Storage, LLC (hereinafter Discharger), that:

1. Discharger owns the property at 1165 East Arques Avenue in Sunnyvale. On July 15, 2005, Discharger was conducting building demolition activities at the site as part of a redevelopment project. During demolition activities on July 15, 2005, Discharger damaged an electrical transformer, initiating a spill of perchloroethylene (PCE). The damaged transformer was placed on the top of demolition debris and was left at the site until July 18, 2005, when pumping of its remaining contents commenced. During these four days, 250 gallons of PCE leaked out of the transformer, soaked into the soil, and infiltrated into the underlying shallow groundwater aquifer. Discharger did not notify the Office of Emergency Services about the spill until July 19, 2005.
2. Discharger has drilled 56 soil borings in the spill area and collected and analyzed over two hundred soil samples to define the extent of soil and groundwater contamination in both unsaturated and saturated zones. PCE concentrations in soil samples ranged from non-detect to 12,000 mg/kg. A groundwater sample collected from a nearby monitoring well (MM17A) on October 13, 2005 (three months after the discharge), contained 12,000 ug/l of PCE. A groundwater sample collected from the same well on October 12, 2000, contained 24 ug/l of PCE. PCE in this well has ranged between 7 and 69 ug/l in the past 15 sampling events conducted between January 4, 1992 and October 12, 2000. In addition, no significant changes in the concentration of PCE have been observed in four other nearby groundwater monitoring wells in the area during the October 13, 2005 sampling event. The California drinking water Maximum Contaminant Level (MCL) for PCE is 5 ug/l. To date Discharger has excavated and removed over 2,300 cubic yards of PCE-impacted soil from the site.
3. California Water Code (CWC) Section 13264 prohibits a person from discharging waste prior to filing a report of waste discharge (ROWD) and without waste discharge requirements (WDRs). Discharger discharged PCE without filing a ROWD or obtaining WDRs.

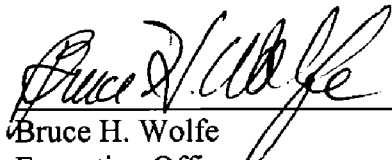
4. Under CWC Section 13265(c), any person discharging hazardous waste as defined by Health and Safety Code Section 25117, in violation of CWC Section 13264, is guilty of a misdemeanor and may be civilly liable in accordance with CWC Section 13265(d). PCE is a hazardous waste under Section 25117 of the Health and Safety Code and the regulations promulgated hereunder. Liability under CWC Section 13265(c) cannot be imposed if (a) a discharger is not negligent *and* immediately files a ROWD, or (b) the violation was insubstantial. Discharger did not file a ROWD subsequent to the discharge and therefore the first defense to liability is unavailable to Discharger. Additionally, discharging 250 gallons of a hazardous waste such as PCE without filing a ROWD is not an insubstantial violation.
5. Discharger violated CWC Section 13350(b)(1) because it discharged PCE, a hazardous substance as defined in CWC Section 13050, into waters of the State. Persons violating Section 13350(b)(1) are strictly liable.
6. For violating CWC Section 13264, the Water Board may administratively impose civil liability pursuant to CWC Sections 13265(c) and (d)(1) and 13323 in an amount that cannot exceed five thousand dollars (\$5,000) for each day in which the violation occurs. For violating CWC Section 13350(b)(1), the Water Board may administratively impose civil liability pursuant to CWC Sections 13350(e) and 13323 either on a daily basis or a per gallon basis, but not both. Under CWC Section 13350(e), the civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day in which a violation occurs. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged. Violations of CWC Section 13264 and Section 13350(b)(1) are separate offenses for which civil liability may be imposed under both sections.
7. On January 27, 2006, the Executive Officer issued Administrative Civil Liability Complaint No. R2-2006-0002 (Complaint) to Discharger proposing a \$40,000 Administrative Civil Liability for the violations of the CWC Sections 13264 and 13350(b)(1). The \$40,000 is based on four days of violating CWC Section 13264 (at a civil liability rate of \$5,000 per day of violation) and four days of violating CWC Section 13350(b)(1) (at a civil liability rate of \$5,000 per day of violation).
8. The Water Board, after considering the evidence and hearing all testimony, determined Discharger is subject to civil penalties for violating Water Code Sections 13264 and 13350(b) as alleged in the Complaint. In determining the amount of civil liability, the Water Board considered the factors set forth in CWC Section 13327.
9. A \$25,000 Administrative Civil Liability is appropriate based on the determinations in Finding No. 8. The prosecutorial staff report dated April 28, 2006, supporting the civil liability is incorporated herein by this reference.
10. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California

Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

11. Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this Order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that TWC Storage, LLC, is civilly liable for the violation of California Water Code Sections 13264 and 13350(b)(1), and shall pay the administrative civil liability in the amount of \$25,000. The \$25,000 consists of \$5,000 for violating CWC Section 13264 and \$20,000 for violating CWC Section 13350(b)(1). The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 10, 2006.



Bruce H. Wolfe
Executive Officer